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10	UNITED STATES DISTRICT COURT		
11	FOR THE WESTERN DISTRICT OF WASHINGTON		
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13	UNITED STATES OF AMERICA,)	
14	Plaintiff,)) ONUM ACTION	
15	V.) CIVIL ACTION) NO.	
16	F.O.F., INC.,) C09-5015JKA	
17	Defendant.	7	
18		_)	
19	CIVIL COST RECOVERY COMPLAINT		
20	Plaintiff, the United States of America, by the authority of the Attorney General of		
21	the United States and at the request of the Administrator of the United States Environmental		
22	Protection Agency (EPA), alleges as follows:		
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26	U.S. v. FOF, Complaint - 1	U.S. Department of Justice Environmental & Natural Resources Div.	
27		Environmental Enforcement Section P.O. Box 7611	
28		Ben Franklin Station Washington, D.C. 20044	

INTRODUCTION 1 2 1. This is a civil action for recovery of response costs under Section 107(a) 3 of the Comprehensive Environmental Response, Compensation, and Liability Act 4 (CERCLA), 42 U.S.C. § 9607(a), as amended. The United States seeks to recover costs 5 incurred for investigative and remedial activities, enforcement and other response activities taken in response to releases and threatened releases of hazardous substances at the Head 6 and Mouth of the Hylebos Waterway within Operable Unit No. 1 ("OU1") of the 7 Commencement Bay Nearshore/Tideflats Superfund Site, located in Tacoma, Washington 8 (hereinafter "the Hylebos Waterway Problem Areas"). 10 JURISDICTION AND VENUE 2. 11 This Court has jurisdiction over this action and each defendant pursuant to Sections107 and 113(b) of CERCLA, 42 U.S.C. §§ 1331 and 1345. 12 13 3. Venue is proper in this District pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b), because the claims arose in this 14 15 District and releases and/or threatened releases of hazardous substances occurred in this District. 16 DEFENDANT 17 At times relevant hereto, the defendant owned and/or operated a facility, 18 4. 19 within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2). 5. The defendant is a "person" within the meaning of Section 101(21) of 20 CERCLA, 42 U.S.C. § 9601(21). 21 LAW GOVERNING CLAIMS FOR RELIEF 22 UNDER SECTION 107 OF CERCLA 23 Section 104 of CERCLA, 42 U.S.C. § 9604, provides that whenever 6. 24 25 U.S. v. FOF, Complaint - 2 U.S. Department of Justice 26 Environmental & Natural Resources Div.

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1	any hazardous substance is released into the environment, or there is a substantial threat of			
2	such a release into the environment, the President is authorized to act, consistent with the			
3	National Contingency Plan, to remove or arrange for the removal of, such hazardous			
4	substance.			
5	7. The President's authority under Sections 104(a) and (b) of CERCLA, 42			
6	U.S.C. §§ 9604(a) and (b), as amended, has been delegated to the Administrator of EPA			
7	pursuant to Section 2(e) of Executive Order No. 12316, 46 Fed. Reg. 42,237 (August 14,			
8	1981), reprinted in 42 U.S.C.A. § 9615 at 544-48.			
9	8. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent			
10	part:			
11	Notwithstanding any other provision or rule of law, and subject only to			
12	the defenses set forth in subsection (b) of this section			
13	(1) the owner and operator of a vessel or a facility,			
14	(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of shall be liable for —			
15				
16	(A) all costs of removal or remedial action incurred by the United States Government or a State not inconsistent			
17	with the national contingency plan			
18	9. Section 113(g)(2)(B) of CERCLA, 42 U.S.C. § 9613(g)(2)(B), provides:			
19	In any such action described in this subsection [an action for recovery of costs under section 107 of CERCLA], the court shall enter a declaratory			
20	judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or			
21	damages.			
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 The Commencement Bay Nearshore/Tideflats Superfund Site is in Tacoma, Washington.

- 11. EPA placed the CB N/T Site on the National Priorities List (NPL) in 1983. The CB N/T Site consists of seven operable units ("OUs"): (1) the CB N/T sediments; (2) the ASARCO Tacoma Smelter; (3) Tacoma Tar Pits; (4) the Ruston/North Tacoma Study Area; (5) CB N/T source control; (6) Asarco Sediments; and (7) Asarco demolition.
- 12. On September 30, 1989 EPA issued a Record of Decision ("ROD") that selected the remedy for remediation of sediments, OU1. The ROD identified nine problem areas within OU1 that required sediment cleanup. The nine problem areas are (1) and (2) the Head and Mouth of the Hylebos Waterway; (3) Sitcum Waterway, (4) St. Paul Waterway; (5) Middle Waterway; (6) and (7) Head and Mouth of Thea Foss Waterway; (8) the Wheeler-Osgood Waterway; and (9) Asarco sediments.
- 13. The defendant owned, leased or operated on property along either the Head or the Mouth of the Hylebos Waterway.
- 14. At times relevant hereto, the operations conducted by the defendant resulted in the disposal of hazardous substances at or to the Hylebos Waterway Problem Areas.
- 15. There were and are "releases," as defined at Section 101(22) of CERCLA, 42 U.S.C. § 9607 (22), and the threat of continuing releases, of "hazardous substances," as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), into the environment at the Hylebos Waterway Problem Areas.

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1	REQUEST FOR RELIEF		
2	22. WHEREFORE, the United States respectfully requests that the Court:		
3	A.	Enter judgment against the defendant, jointly and severally, for all	
4	response costs incurred by the United States in connection with the Hylebos Waterway		
5	Problem Areas,		
6	B.	Enter a declaratory judgment holding the defendant jointly and	
7	severally liable for all future response costs incurred by the United States in connection with		
8	the Hylebos Waterway Problem Areas;		
9	C.	Award the United States its costs in this action;	
10	and		
11	D.	Grant such other and further relief as is appropriate.	
12		Respectfully submitted,	
13		ELLEN M. MAHAN	
14		Deputy Section Chief Environment & Natural Resources Division	
15		Environmental Enforcement Section	
-			

MICHAEL MCNULTY Trial Attorney **Environmental Enforcement Section** U.S. Department of Justice P.O. Box 7611 Washington, D.C. 20044 (202)514-1210

United States Attorney

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